

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18625
[Redacted])	
)	DECISION
)	
_____)	

On January 14, 2005, the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (taxpayer). The Notice proposed additional use tax and interest for the period of July 1, 2003, through July 31, 2003, in the total amount of \$3,924.

The taxpayer's president, [Redacted], filed a timely appeal and petition for redetermination dated March 8, 2005. The Commission held an informal conference with Mr. [Redacted] on February 7, 2006. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

Taxpayer owns a [Redacted] truck (vehicle) that it registered under the International Registration Plan (IRP). The vehicle was originally owned by [Redacted] who had also registered the vehicle under the IRP. [Redacted] was dissolved as a corporation in March of 2003 and all its assets were sold to the taxpayer. In May of 2003, the taxpayer registered the vehicle under the IRP for its 2003 registration year but did not meet the out-of-state mileage requirements outlined in Idaho Code section 63-3622R. Neither corporation has paid sales or use tax on this vehicle. The tax and interest computations were based on actual vehicle appraisal documentation provided by the taxpayer.

In the taxpayer's protest letter, Mr. [Redacted] stated:

[Redacted] has received your determination for deficiency. We disagree with this determination and hereby protest.

After consulting with our accountant and attorney, we do not believe that sales tax is owed on the vehicle in question. [Redacted] purchased the assets of [Redacted], Inc. in March of 2003. The purchase included the vehicle in question. Assets in a bulk purchase are exempt from Idaho sales tax by statute.

Our attempt is not to avoid a legitimate obligation or waste the time of the tax commission. We sincerely believe that we acted properly in the bulk purchase.

Mr. [Redacted] is correct that no sales tax is due on the sale of the vehicle by [Redacted] to [Redacted]. The bulk sales exemption in Idaho Code section 63-3622K(5) states:

63-3622K. Occasional sales. -- (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means: . . .

(5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of accounts and records.

Even though the vehicle was exempt from sales tax in the bulk sale, the vehicle registered under the IRP is only exempt from use tax as long as the owner meets the requirements of Idaho Code section 63-3622R which states in part:

63-3622R. Motor vehicles, used manufactured homes, vessels, all-terrain vehicles, trailers, off-road motorcycles and snowmobiles. -- There are exempted from the taxes imposed by this chapter: . . .

(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan or similar proportional or pro rata registration system, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under such proportional or pro rata registration

system when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any annual registration period under the international registration plan.

The bulk sale exemption and the IRP exemption are two separate statutes that operate independently of each other. The taxable moment in this case did not arise until the end of the IRP registration period when the vehicle ceased to meet the mileage requirements of Idaho Code section 63-3622R.

Since the taxpayer's IRP fleet for the 2003 registration period operated less than 10% of its miles out of Idaho, use tax would be due on any vehicle in the IRP fleet upon which no sales or use tax had previously been paid.

WHEREFORE, the Notice of Deficiency Determination dated January 14, 2005, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
7/1/03-7/31/03	\$3,600	\$623	\$4,223

Interest is computed through June 29, 2006.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
